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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the Lawyers Committee for Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[30 January 1996]

The situation of human rights in Colombia

1. During the past decade, Colombia has been a persistent, institutional violator of its citizens' fundamental, constitutional human rights. Its record is one of the worst in the hemisphere. Despite many statements of determination to address the problem, and indeed the commendable efforts of some Colombian officials under very difficult circumstances, Colombia's human rights situation has become ever more chronic. 1995 was no exception.

2. According to the Andean Commission of Jurists - Colombian Section (CAJ), on the average, each day in Colombia is marked by at least 10 political murders and a "social cleansing" killing in the slums; every 48 hours a person is tortured; and every 72, a Colombian is "disappeared".

3. These figures for civilian deaths and enforced disappearances exclude combat casualties in the counter-insurgency war between the Government and Colombian rebel groups. But this civilian toll, of crucial concern to the

international community, reflects an official "second front" in the counter-insurgency campaign. CAJ and other Colombian human rights monitors - including the Government's own Ombudsman - calculate that over 65 per cent of the identifiable crimes have been committed by agents of the Colombian army and police force or by their paramilitary allies. The identities of the victims speak for themselves: civic leaders, opposition politicians and activists, priests, lawyers, teachers, labour leaders, journalists, human rights monitors, trade unionists, banana workers, students and peasants.

4. Since 1988, Colombian and international non-governmental organizations, the United Nations, the Organization of American States and the European Union have all investigated and documented concrete evidence of a systematic, institutionalized abuse. Successive Colombian Governments have responded to national and international concern with sophisticated, diplomatic, press and public relations campaigns and the creation of a burgeoning official human rights bureaucracy. The factual record of government actions and decisions throughout this period highlights a Colombian reality: the dissonance between the Government's human rights rhetoric and its incapacity, or unwillingness, to hold its own agents responsible for chronic violations. The facts also compel another conclusion: that the many and diverse past human rights initiatives, all of which played some role in forestalling appointment of a Special Rapporteur for human rights in Colombia, must now give way to that urgently needed step.

5. The list of Colombia's failed opportunities to enforce the principles of Colombian and international law includes:

(a) Failure to begin implementation, despite repeated commitments, to disband the paramilitary groups, and sanction and dismiss from the security forces those officers who maintain links to them. In fact, the paramilitary groups expanded their operations in 1995;

(b) The refusal by President Ernesto Samper, like that of his predecessor, to sign into law a bill criminalizing enforced disappearances;

(c) The failure to punish the perpetrators of the 1990 Trujillo massacre, despite the Government's promises to prosecute those responsible;

(d) The mishandling of the 1990 disappearance, torture and death of Nydia Erika Bautista. After the Deputy Attorney General for Human Rights found Third Brigade commander Brigadier General Hernán Velandia Hurtado responsible for the crime and ordered the General's dismissal from active service, the President instead chose to issue a decree decorating General Velandia "for distinguished military service". As the Commission knows, the President's action defied the Government's own human rights investigators, Colombian law (as it then stood), and the Government's own promises to comply with the pertinent recommendations of the special rapporteurs and working groups of the United Nations. The Attorney General's human rights office was then stripped of its authority to punish active duty officers; the Attorney General was forced to apologize in Congress for the actions of his deputy; and the deputy himself, Hernando Valencia Villa, was forced to leave the country when he became the target of death threats;

(c) The review of the Military Penal Code. During the debate on reforms to the military justice system President Samper chose to support just those provisions of the current code that have done the most to perpetuate a virtual 100 per cent rate of impunity for human rights crimes. He termed allegations that security forces commit such abuses "without foundation, presented by their enemies", and vowed to defend military jurisdiction; and

(d) The Government's failure to keep its promises regarding an "Inter-institutional Commission" (IC). Although the Government promised the Commission at its fifty-first session in writing that it would create a commission including NGO representatives to study implementation of United Nations recommendations, in fact the IC excludes NGOs. Despite the Government's commitments to establish means for NGOs to consult with the IC, none has been established, and the cooperation with NGOs remains another broken promise.

6. Set against a record of omissions which undermine the rule of law are those government measures that actively strip Colombians of fundamental rights. These include the imposition and expansion of the Public Order or "regional" justice system and the imposition, twice in 1995 alone, of a state of internal commotion and the executive decrees issued pursuant to them.

7. Despite a name change (itself emblematic of the manner in which Colombian Governments have addressed their most pressing human rights problems) to "regional tribunals", the Public Order courts remain as unfair and ineffective as ever. The well-known procedural deficiencies of the judgement phase, including the anonymity of judges, prosecutors and witnesses, are nearly overshadowed by one central fact: in large areas of the country, the Government has effectively handed police powers to the military, which now arrests and detains suspects based on evidence to which the defence can rarely even gain access. The Lawyers Committee recognizes the right and responsibility of the Colombian Government to apprehend and prosecute criminals, be they narcotics traffickers or armed insurgents. However, the violations of due process that are regularly documented in prosecutions of those accused of terrorism and related non-narcotics offences demand special attention from the Commission. With prosecutors failing to exercise appropriate control over the military's arrest and detention practices, and judicial review so decimated that Colombia's Supreme Court considered it unconstitutional for a judge to scrutinize an order of pre-trial detention, the justice system is in reality distorted beyond reasonable recognition.

8. Such is the tortuous history of broken governmental promises, failed initiatives and ignored recommendations that failure by the Commission to appoint a Special Rapporteur for Colombia would undermine the continued credibility of the United Nations, in particular the Commission on Human Rights. The past findings of the Commission, its Sub-Commission, thematic rapporteurs and treaty bodies preclude any other resolution of this situation. The word and deed of the United Nations in the last year alone mandate this conclusion. For example:

(a) The Special Rapporteurs on torture and extrajudicial, summary or arbitrary executions, issued a joint report on Colombia in which they

recommended the appointment of a country special rapporteur unless rapid and radical improvement occurred in Colombia's human rights situation;

(b) The Sub-Commission passed a strong resolution on Colombia, calling on the Government to report progress on implementation of numerous United Nations recommendations and calling on the Commission to scrutinize the results;

(c) The Committee against Torture in November 1995 raised several concerns and made recommendations to the Government of Colombia, none of which has been implemented.

9. In these circumstances, the time for technical assistance and advisory services from the international community has passed. The situation has not improved. Colombia has not managed to comply with any of the recommendations for change; nor has it shown a willingness to live up to any of the legal obligations, enshrined in any of the many conventions and treaties on human rights or humanitarian law to which it is a party. For several years, Colombian human rights organizations have pleaded with the international community to appoint a permanent special rapporteur to scrutinize the Colombian situation with a view to contributing to more effective action. The Lawyers Committee for Human Rights concurs with this view and urges the international community to act now to compel the Colombian Government to take responsibility for the acts of its agents and return to the rule of law.